

State of California
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
CLOSED SESSION AGENDA
Government Code § 11126 (a), (c)(3), (e) and (f)
for
Wednesday, February 6, 2013
10 a.m.
Sacramento, California
&
West Covina, California

TO: Members of the California Occupational Safety and Health Appeals Board

FROM: J. Jeffrey Mojcher, Chief Counsel

DATE: January 25, 2013

RE: Closed Session of the Board to be held on February 6, 2013

Pursuant to Government Code section 11126, subdivisions (a), (c)(3), (e) and (f) and the Labor Code sections 6609 and 6620, the Appeals Board will hear the following items in Closed Session. Any item not resolved in this meeting will be continued to subsequent meetings as indicated in the minutes.

DECISIONS OF ADMINISTRATIVE LAW JUDGES:

(Written decision issued by an Administrative Law Judge. The decision summarizes the evidence received from the Division of Occupational Safety & Health and the Employer, makes findings of fact for all issues involved in the appeal and gives reasons and grounds for the decision. The Board Members review the decision and decide if they will reconsider the ALJ decision on their own motion.)

1. BIG LOTS #4038, 11-R3D2-1929 THROUGH 1931
2. BRAND ENERGY SERVICES OF CALIFORNIA, INC., 12-R5D3-1099
3. GLOBAL MODULAR, INC., 11-R2D2-2707 THROUGH 2708
4. KIMBERLY PFENDLER MARITAL TRUST DBA PFENDLER RANCHES, 12-R1D5-0295
5. LOS ANGELES HARBOR GRAIN TERMINAL, 11-R3D5-2439
6. McCARTHY BUILDING COMPANIES, INC., 11-R4D2-1706 AND 2046

**CALIFORNIA OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM
FOR FEBRUARY 6, 2013**

Page 2

7. MID-COAST BUILDERS SUPPLY, INC., DBA MID-COAST BUILDERS, INC.,
11-R4D3-2779 AND 2780
8. SAFEWAY, INC., 12-R1D3-0908 AND 0909
9. LYNDOL GORDON SWARTZ INDIVIDUAL DBA LYNDOL GORDON
SWARTZ, 11-R2D3-0600 AND 0601
10. US ALL GLASS INC., 12-R2D1-1379

ORDERS OF ADMINISTRATIVE LAW JUDGES:

(Written order issued by an Administrative Law Judge after a pre-hearing conference in which the Division of Occupational Safety & Health and the Employer agree to settle an appeal without a hearing. The Board Members review the order and decide if they will reconsider or remand the issued order.)

1. 27TH STREET BAKERY (SHOP) INC., 12-R6D2-0247 AND 0248
2. AIRCRAFT FOUNDRY CO INC., 12-R6D2-0685 THROUGH 0687
3. ALEX NURSERY, 12-R3D2-0320
4. ALL FAB PRECISION SHEETMETAL, 12-R1D3-1692
5. PAUL AMATO DBA PAUL'S LIVE FROM NEW YORK, 11-R2D1-2701
AND 2702
6. AMPAC FINE CHEMICALS, LLC, 12-R6D3-1687
7. ARCHIVES MAN. CORP. DBA SECRETS ADULT SUPER STORE,
12-R1D4-3384 AND 3385
8. ARCHIVES MAN. CORP. DBA SECRETS ADULT SUPER STORE,
12-R1D4-3386 AND 3387
9. ARNABAL INTERNATIONAL, 11-R6D2-3124 THROUGH 3126
10. ARTISTIC HOMES, INC., 12-R1D4-2067
11. ARTISTRY CUSTOM CABINETS INC., 11-R3D2-3180
12. ASHLEY FURNITURE INDUSTRIES INC., 12-R3D3-2920
13. ASON METAL PRODUCTS INC., 12-R6D2-0182 THROUGH 0190

CALIFORNIA OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM
FOR FEBRUARY 6, 2013
Page 3

14. A. TEICHERT & SON DBA TEICHERT AGGREGATES, 12-R5D1-2330
15. AZEVEDO FEED, INC., 12-R2D2-1312
16. BARRETT BUSINESS SERVICES, INC., 12-R4D3-1036
17. BAY CITY FLOWER COMPANY, INC., 12-R6D7-2293
18. BELFOR USA GROUP INC. DBA BELFOR PROPERTY RESTORATION,
11-R3D2-3151
19. BILL WHITLEY PAINTING & DRYWALL, INC., 12-R2D1-3460 AND 3461
20. BUBBLES CAR WASH CORP DBA BUBBLES CAR WASH & DETAIL, 12-
R2D1-3666
21. BUTTE CO RICE GROWERS ASSOC DBA BUCRA, 12-R6D3-2138
22. CAMARILLO RECYCLING, INC., 12-R4D3-1133 AND 1134
23. CARAN PRECISION ENGINEERING & MFG. CORP., 12-R3D1-1530 AND 1531
24. CAROLE IN YOUR KITCHEN BAKERY CAFÉ, 11-R2D1-2432
25. CENTRAL VALLEY FARMS SERVICES, 12-R2D4-2183
26. CITY OF SIGNAL HILL DEPT. OF PUBLIC WORKS WATER DIV.,
11-R3D5-2064
27. CM LAUNDRY LLC, 11-R6D2-2284 THROUGH 2287
28. COASTAL INTERNATIONAL, INC., 11-R1D1-2452
29. DREWICKE BUILDERS, INC., 12-R2D2-0298
30. EARTHGRAINS BAKING COMPANIES, INC., 12-R6D1-0593
31. EAST BAY MUNICIPAL UTILITY DISTRICT, 11-R1D4-0135 THROUGH 0136
32. EAST COUNTY DEVELOPMENT, INC., 11-R3D2-0311 THROUGH 0318
33. ECKERT ELECTRIC, 12-R3D2-2749 and 2750
34. ELBOW FARM SUPPLY, INC., 12-R6D3-1780 THROUGH 1783

**CALIFORNIA OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM
FOR FEBRUARY 6, 2013**

Page 4

35. ESCALON PREMIER BRANDS, 12-R2D4-2070
36. ESPANA METAL CRAFT INC., 12-R6D2-0972
37. ESPARZA ENTERPRISES, INC., 11-R2D4-3289 AND 3290
38. ESPARZA ENTERPRISES, INC., 11-R2D4-3294 AND 3295
39. ERS INDUSTRIAL SERVICES, INC., 11-R3D2-3152
40. FERRARINI USA, INC., 12-R4D3-2781 AND 2782
41. FIJI ROX INC., DBA LSV CARTS, 12-R3D1-1676 AND 1677
42. FLOTEK, INC., 12-R4D3-1503 AND 1504
43. FOSTER RANCH LP, 11-R2D1-2845
44. FRESENIUS MEDICAL CARE DIABLO, 12-R2D2-2087
45. PETER FRIEL/FM CONSTRUCTION, 11-R1D1-1832 THROUGH 1834
46. EDWARD F. GEORGE DBA THE PEACH FARM, 11-R2D1-2923
47. GILLS ONIONS, LLC., 12-R4D3-1440
48. GOLDEN STATE UTILITY COMPANY, 10-R1D2-1594 THROUGH 1599
49. HENRICY CONSTRUCTION OF CALIFORNIA, INC., 12-R3D6-1433
THROUGH 1435
50. IMMEDIATE FLOOD RESCUE INC. DBA SERURRO, 12-R6D2-0294
51. INTERNATIONAL RECTIFIER, 12-R6D4-1618
52. JACOBO PLASTERING INC., 12-R4D2-0996 THROUGH 0999
53. J & A FOOD SERVICES, INC DBA BURGER KING, 11-R2D3-0999
54. JETT HARVEST, INC., 12-R3D2-1628
55. JFC CONSTRUCTION, 12-R1D5-0153
56. JOHN BOYD ENTERPRISES, INC., DBA JB RADIATOR SPECIALTIES, INC,
11-R2D1-2960

CALIFORNIA OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM
FOR FEBRUARY 6, 2013
Page 5

- 57. JOHN B. SANFILIPPO & SON, INC., 12-R2D4-2262
- 58. KAISER PERMANENTE, 12-R3D1-1170 AND 1171
- 59. KENT'S BROMELIAD NURSERY, INC., 11-R3D2-2775
- 60. PHILIP & DONALD KLINKERT DBA OVAL HEAD, 11-R6D2-2750
THROUGH 2755
- 61. LA MESA SPRING VALLEY SCHOOL DISTRICT, 12-R3D2-0528
- 62. LARA LABOR CONTRACTORS, 11-R2D2-2358
- 63. LA TOURANGELLE, INC., 11-R2D1-2660 THROUGH 2663
- 64. MAGNUSON TIRES, INC., 12-R3D3-1570 AND 1571
- 65. MASAMI CATTLE RANCH INC., 11-R2D3-2273 THROUGH 2275
- 66. M CONSTRUCTION & DESIGN, INC., 12-R1D2-1555 THROUGH 1557
- 67. MIDAS AUTO SERVICE, 11-R1D3-2317
- 68. MODERN GINNING COMPANY, 12-R3D3-1748
- 69. MODIFIED PLASTICS INC., 11-R3D1-2491 AND 2492
- 70. MONTEREY MUSHROOM, INC., 12-R6D7-3375
- 71. MORTON SMITH ELECTRICAL, INC., 12-R1D5-1859
- 72. MOTORCAR PARTS OF AMERICA, INC., 12-R3D5-0896 AND 0897
- 73. NATIONAL BLENDING COMPANY, LLC, 11-R5D1-0860
- 74. NEPO, INC., 12-R3D6-2049 AND 2050
- 75. JORGE OCHOA DBA OCHOA FARM LABOR SERVICES, 12-R6D7-2984
- 76. ONG PICK-UP & DELIVERY SERVICE, 12-R6D2-3083 THROUGH 3085
- 77. PACIFIC COAST PRODUCERS, 12-R2D3-1695 AND 1696
- 78. PACIFIC NATURAL STONE DBA MARMOL EXPORT, 12-R3D2-0642

CALIFORNIA OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM
FOR FEBRUARY 6, 2013
Page 6

- 79. DON PARKER INDIVIDUAL DBA PARKER BROTHERS CONSTR SERVICES,
12-R2D3-1381
- 80. POM WONDERFUL, 09-R2D5-1401 AND 1402
- 81. PORTS AMERICA, 11-R6D2-2809 AND 2810
- 82. PROFESSIONAL TREE SERVICE, 12-R2D3-1448
- 83. QUALITY TUNE-UP #9, 12-R2D4-2396
- 84. REAL GOODS ENERGY SOLAR TECH INC., DBA REAL GOODS S,
12-R2D2-2095 AND 2096
- 85. REDWOOD EMPIRE FOOD BANK, 12-R1D5-1345
- 86. RICHARD'S PLUMBING INC., 11-R2D5-2611
- 87. ROSS DRESS FOR LESS, 12-R6D2-0104 THROUGH 0106
- 88. SAAG'S SPECIALTY MEATS, 11-R6D1-3250 THROUGH 3253
- 89. SACRAMENTO LOAVES & FISHES, 12-R2D1-3353
- 90. SACRAMENTO LOAVES & FISHES, 12-R2D1-3354
- 91. SAFEWAY INC., 11-R2D4-0844 AND 0845
- 92. SAFEWAY INC., 11-R2D4-1105 THROUGH 1116
- 93. SAFEWAY INC., 11-R2D4-1117
- 94. SECURE STAFF, 12-R3D3-1681
- 95. SHIMMICK CONSTRUCTION CO/OBAYASHI CORP. J.V., 12-R5D2-1000
- 96. SIGN TECH ELECTRICAL ADVERTISING INC., 12-R3D2-3320 AND 3321
- 97. SOL ENVIRONMENTAL, INC., 12-R6D1-0724
- 98. SOUTHLAND/TUTOR PERINI JV, 12-R5D1-2799
- 99. SOUTHWEST AIRLINES CO., 11-R1D4-2624

**CALIFORNIA OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM
FOR FEBRUARY 6, 2013
Page 7**

100. STAR TILE INC., 11-R6D2-2878 AND 2879
101. STEHLY GROVE MANAGEMENT, INC., 12-R6D7-2866
102. STERICYCLE, INC., 12-R2D1-3266
103. STRUCTURAL COMPOSITE INDUSTRIES LLC., 12-R3D6-1455 AND 1456
104. SUNFRESH USA, INC., 12-R6D7-2453 THROUGH 2455
105. SUNPOL RESINS POLYMERS, INC., 11-R2D2-2356 THROUGH 2357
106. SUNRISE LANDSCAPE & TREE, 11-R3D2-2741
107. SUNTREAT PACKING & SHIPPING CO., 12-R2D5-1110 AND 1111
108. SYSCO SAN FRANCISCO, INC., 12-R6D3-1882
109. TOURO UNIVERSITY CALIFORNIA, 12-R2D2-1860
110. VENTURA TRANSFER COMPANY, 12-R3D5-1534
111. WESTOWER COMMUNICATIONS, 12-R2D5-0942
112. XEROX CORPORATION, 11-R3D5-2857

ORDER AFTER REMAND:

1. MARIA DE LOS ANGELES COLUNGA DBA MERCED FARM LABOR

ORDERS DISMISSING APPEALS:

1. BAKU CORPORATION DBA ALDER CREEK MILLWORK, 11-R2D1-0759
2. HACIENDA PLASTERING, INC., 12-R6D5-1786
3. LA TAVERNA, 12-R3D1-1705

STIPULATION & SETTLEMENT AGREEMENTS:

1. LFP VIDEO GROUP LLC DBA HUSTLER VIDEO, 11-R6D2-0966
THROUGH 0968

**CALIFORNIA OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM
FOR FEBRUARY 6, 2013
Page 8**

MATTERS HELD OVER FROM PREVIOUS MEETINGS:

(If the Board is unable to conclude its deliberations and/or if any matter(s) is (are) put over from a previous meeting, they will be further discussed.)

PETITIONS FOR RECONSIDERATION

1. HOFFMAN FOOD MANAGEMENT CO., LLC, 12-R6D7-9156
2. K H S & S OF CONCORD, INC., 11-R2D2-0374 AND 0375
3. ORANGE COUNTY FIRE AUTHORITY, 12-R3D1-0364
4. RONALD D. LITTLE DBA AAA TREE SERVICE, 11-R2D1-1499
5. SIERRA FOREST PRODUCTS, 09-R2D5-3979
6. STEVEN EARL WILLIAMS DBA WEST COAST CONSTRUCTION,
11-R3D6-1700

DENIAL OF PETITIONS FOR RECONSIDERATION (DRAFT):

1. JACOV HERSCU DBA JACK'S GENERAL CONTRACTING,
11-R1D4-1725 -1729

MATTERS PENDING RECONSIDERATION:

(If the Appeals Board orders reconsideration of an Order or Decision, it reviews the record and then affirms, rescinds, alters or amends the Order or Decision being reconsidered.)

1. A-1 PROTECTIVE SERVICES, INC., 10-R1D1-1592
2. AC TRANSIT, 08-R1D4-0135
3. AGRI-VALLEY IRRIGATION, INC., 07-R2D5-3785 AND 3786
4. ARMOUR STEEL CO., INC., 08-R2D1-2649 THROUGH 2655
5. BOBERG ENGINEERING & CONTRACTING, INC., 06-R3D3-4963
6. BRUNTON ENTERPRISES DBA PLAS-TAL MFG. CO., 09-R6D2-2239
THROUGH 2241
7. BRUNTON ENTERPRISES, INC. DBA PLAS-TAL MFG. CO., 08-R3D3-3445
AND 3448

**CALIFORNIA OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM
FOR FEBRUARY 6, 2013**

Page 9

8. BURBANK RECYCLING, INC., 10-R4D3-0562 AND 0563
9. CALIFORNIA ERECTORS, INC., 10-R1D2-2772 THROUGH 2775
10. C.C. MYERS, INC., 08-R1D1-952 THROUGH 955
11. CLARK PACIFIC PRECAST, LLC, ET AL, 09-R2D1-0282
12. COFFMAN SPECIALTIES, INC., 10-R3D3-3532
13. COMMERCIAL METAL FORMING, 09-R3D1-1592
14. COMMUNITY RECONSTRUCTION SOLUTIONS, INC., 11-R1D1-1484
15. CONTRA COSTA ELECTRIC, INC., 09-R1D4-3271, 3272 AND 3960
16. COUNTY OF ALAMEDA, GENERAL SERVICES AGENCY, 11-R1D4-3064
17. CORONADO IRRIGATION SERVICES, 09-R4D2-0385 THROUGH 0387
18. CROP PRODUCTION SERVICES, 09-R6D4-4036 THROUGH 4038
19. DAVIS DEVELOPMENT COMPANY, 10-R3D1-3360 THROUGH 3362
20. EZ MIX, INC., 08-R4D3-1898
21. GRANITE ROCK COMPANY, 08-R1D3-3675 THROUGH 3687
22. HYDRO-SCIENCE OPERATIONS INC., 10-R1D2-0389
23. IN THE POCKET, INC. DBA BRENTWOOD BOWL, 11-R1D3-2272
24. IRWIN INDUSTRIES, 08-R6D4-1454
25. LAND O' LAKES PURINA FEED LLC, 08-R2D4-1843 AND 1844
26. LIQUIVISION TECHNOLOGY, INC., 08-R2D1-1712 THROUGH 1714
27. LION RAISINS, INC., 08-R2D5-2253 AND 2254
28. L & S CONSTRUCTION, INC., 10-R3D1-1821 AND 1822
29. M1 CONSTRUCTION, INC., 12-R4D1-0222 AND 0223
30. MARINE TERMINALS, 08-R6D2-1920

CALIFORNIA OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM
FOR FEBRUARY 6, 2013
Page 10

31. MORE GUSTO CATERING DBA EL CHOLO CATERING, 10-R4D1-1298
32. NATIONAL STEEL AND SHIPBUILDING COMPANY, 10-R6D2-3791
33. ORANGE COUNTY FIRE AUTHORITY, 12-R3D1-0364
34. OWENS-ILLINOIS GLASS CONTAINER, INC., 09-R1D4-2021 AND 2022
35. PARAMOUNT FARMS, KING FACILITY, 09-R4D3-0864
36. PERFORMANCE CONTRACTING GROUP DBA PERFORMANCE CONTRACTING, INC., 08-R2D1-0025 AND 0026
37. PERSONNEL PLUS, INC., 11-R3D5-1302
38. ROLLED STEEL PRODUCTS CORP., 10-R6D2-4047 AND 4048
39. JOSH AND CARRIE SALAZAR DBA CJ MANUFACTURING, 09-R6D2-1710
40. SHEEDY DRAYAGE COMPANY, 06-R1D4-3053 THROUGH 3055
41. SHIMMICK-OBAYASHI, 08-R3D3-5023 THROUGH 5025
42. SMUD, 08-R2D1-4887 THROUGH 4889
43. MARTIN J. SOLIS DBA SOLIS FARM LABOR CONTRACTOR, 08-R2D1-3414 THROUGH 3418
44. SOUTHLAND-TUTOR-PERINI JOINT VENTURE, 11-R5D1-3248
45. STAFFCHEX, 10-R4D3-2456 THROUGH 2458
46. SUNRISE GROWERES FROZSUN FOODS, 09-R4D3-2850
47. A. TEICHERT & SON, INC. DBA TEICHERT AGGREGATES, 09-R5D1-2443
48. TL PALVICH CONSTRUCTION, INC., 11-R3D6-1303 THROUGH 1310
49. VAN EVERY CONSTRUCTION, INC., 11-R1D4-0936 AND 0937

LEGISLATION:

CALIFORNIA OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM
FOR FEBRUARY 6, 2013
Page 11

PENDING LITIGATION:

(If the Division of Occupational Safety & Health or the Employer disagrees with a decision after reconsideration or a denial of a petition for reconsideration, either one or both parties may apply to the California Superior Court for a writ of mandate. The Appeals Board receives legal advice from its Legal Unit and provides policy direction regarding pending litigation.)

SUPERIOR COURT:

1. XL CONSTRUCTION, 34-2009-80000300 (08- 1191/1193)
2. M.C.M. CONSTRUCTION, INC., 34-2009-80000378 (09-9230)
3. WEBCOR BUILDER, INC., 34-2010-80000439 (06-R1D1-3030/3032)
4. GRANITE CONSTRUCTION CO., INC., (DOSH V OSHAB) 34-2010-800006047 (07-R5D1-3611)
5. CLARK PACIFIC, A GENERAL CALIFORNIA PARTNERSHIP, 34-2010-80000640 (08-R2D1-0027 THROUGH 0030)
6. SMUD, 34-2010-80000723 (08-R2D1-4887)
7. BAY AREA RAPID TRANSIT DISTRICT, 34-2011-80000819 (08-R1D1-5170)
8. MASCON, INC., 34-2011-80000820 (08-R2D1-4178 AND 4279)
9. CLARK PACIFIC DBA PACIFIC EMBEDDED PRODUCTS, 34-2011-80000965 (10-0188~0191)
10. CA PRISON INDUSTRY AUTHORITY, CIV 1105778 (09-R1D5-2459 THROUGH 2461)
11. FLATIRON CONSTRUCTION CORP, 34-2012-800001029 (10-R4D1-2789)
12. HOLLANDER HOME FASHION, BS-135444 (10-R4D2-3704)
13. SECA EQUIPMENT REMOVAL & DISMANTLING, INC., 12CV01039 (07-R2D3-0275)
14. JENSEN PRECAST, 34-2012-80001120 (05-R2D1-2377)
15. THE HERRICK CORPORATION, 34-2012-80001118 (07-0495)

CALIFORNIA OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM
FOR FEBRUARY 6, 2013
Page 12

16. UNDERGROUND CONSTRUCTION, 34-2012-80001124 (09-3518)
17. DUININCK BROS., INC., 34-2012-80001129 (06-2871)
18. SHERWOOD MECHANICAL, INC., 37-2012-00101466 (08-R3D2-4690 ~ 4693)
19. C.A. RASMUSSEN, INC., 34-2012-80001241-CU-WM-GDS (08-R4D5-0219 AND 0220)
20. SHIMMICK CONSTRUCTION CO., INC., 34-2012-80001248 (09-R2D3-0399)
21. A TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001258 (05-R2D4-2650 AND 2651)
22. CA DEPT OF FORESTRY, 34-2012-80001263 (10-R2D1-0728)
23. A. TEICHERT & SON, 34-2012-80001265 (05-R2D5-2650 AND 2651)
24. PRESTON PIPELINES, INC., 34-8012-80001277 (09-R6D7-3345)
25. BLUE DIAMOND GROWERS, 34-2012-80001308 (10-R2D1-1280/1281)
26. CLARK PACIFIC PRECAST LLC, et al, 34-2012-80001319 (09-R2D1-0282/0283)
27. A. TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001332 (09-R4D5-0459 & 0460)
28. A. TEICHERT & SON, DBA TEICHERT AGGREGATES, RG12 659881 (10-R5D1-3029)
29. HOME DEPOT USA, INC., BS141301 (10-3284)

PERSONNEL: *(Issues regarding staff.)*

Any matter not completed at this Closed Session may be continued to subsequent meetings.